

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8001 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SECRETARY

Versus

DEPUTY LABOUR COMMISSIONER

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Appearance:

MRS SANGEETA N PAHWA for Petitioner  
Ms. Binoda Gajjar, AGP for Respondent No. 1  
NANAVATI ASSOCIATES for Respondent No. 2

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 07/12/98

ORAL JUDGEMENT

RULE.

This petition is filed by 68 workers who are the members of the Union known as Gujarat Mazdoor Panchayat. The petitioner seeks direction to quash the order dated 2.6.1998 passed by the Dy.Labour Commissioner refusing to

refer the dispute for adjudication by the appropriate Court.

2. The say of the petitioner is that they sent the demand to respondent No.2-Company for considering 68 workers mentioned in the schedule as regular workers and to give them all benefits from the date of appointment. An industrial dispute was raised before the Conciliation Officer. The Company raised plea that the workmen belonging to the petitioner-Union, are not their employees and in fact they are employees of the Contractor. The Union took the plea that the contract system prevailing in the Company is a sham and bogus arrangement and actually the workers mentioned in the schedule are the workers of the Company.

3. The Labour Commissioner refused to refer the dispute on the ground that the workmen mentioned in the schedule are not workers of the Company but are workers of the Contractor.

4. It is contended by Mrs. Sangeeta Pahwa, learned Advocate for the petitioner that the appropriate Government under section 10 of the Industrial Disputes Act, cannot decide whether the workmen are workers of the Company or of the Contractor, but the said question has to be referred to the appropriate forum for adjudication. She placed reliance on a decision of the Division Bench of this Court in the case of Gujarat Mazdoor Panchayat vs. State of Gujarat & Ors., reported in (1992) 2 LLJ 486. On the other hand, learned Advocate for the respondent Company submits that the Labour Commissioner is competent to prima facie decide the dispute whether the applicants are workmen or not. He placed reliance on a decision of the Division Bench in the case of N.D.D.B. Employees' Union v. State of Gujarat, reported in 1991 (1) GLR 410.

5. I have considered the rival contentions. So far as the proposition of the law laid down in the cases cited by both the learned Advocates for the petitioners and the respondent, is well settled. In the instant case, categorically, the plea has been taken by the petitioner Union that the contract system prevailing in the Company is a sham and bogus arrangement, and the workmen are actually workers of the Company. This is a disputed question of fact which can appropriately be adjudicated by the appropriate Court on Reference by the appropriate Government.

6. In view of the aforesaid, this Special Civil

Application is alloweod. The order of the respondent No.1 dated 2.6.1998 is quashed and set aside. The respondent No.1 is directed to consider the matter afresh and take appropriate decision within a period of three weeks from the date of receipt of the writ.

Rule made absolute to the aforesaid extent.

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msp.